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| 10/017,893 | 12/12/2001 | Anthony Cadiente | SMBRP001 | 9942 |
| 22434 | 7590 | 01/13/2006 | | |
| BEYER WEAVER & THOMAS LLP P.O. BOX 70250 OAKLAND, CA 94612-0250 | | | EXAMINER GROSSO, HARRY A | |
| | | | ART UNIT 3727 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,893

Applicant(s)

CADIENTE ET AL.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-43, 45, 47, 48, 50, 54-57, 65, 67-75, 78 and 83-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38, 50, 83 and 86-88 is/are allowed.
- 6) ☒ Claim(s) 39, 41-43, 45, 47, 48, 54, 56, 57, 65, 67-72, 74, 75, 78, 84 and 85 is/are rejected.
- 7) ☒ Claim(s) 40, 55 and 73 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/18/05, 11/23/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 56 recites the limitation of a plurality of ventilation slots formed between the basket body and the lid at the front portion of the container. There is no support for this in the specification.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of ventilation slots formed between the basket body and the lid at the front portion of the container (claim 56) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 39, 45, 47, 48, 65, 69, 78, 84 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp in view of Borst et al (4,570,818).

5. Regarding claim 39, Sharp discloses a container (Figures 6-8) with a basket, a lid, a latch securing the lid (10, 21, page 2, lines 40-43) and ventilation slots that enable bi-directional airflow (12', 12", 16, page 2, lines 66-78). Sharp does not teach that the basket is smooth sided. Borst et al discloses a container with smooth sidewalls and no structural ribbing (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of smooth sidewalls and no structural ribbing as disclosed by Borst et al in the container disclosed by Sharp to provide smooth surfaces for contact with the contents and minimize damage caused by sharp corners.

6. Regarding claim 45, Sharp discloses a ventilation channel under the container.

7. Regarding claims 47 and 48, Sharp discloses button latches for securing the lid (10, 21, page 2, lines 40-43).

8. Regarding claims 84 and 85, the container of claim 39 is disclosed as discussed above and Sharp further discloses airflow through the container in perpendicular directions and parallel to major and minor axes (page 2, lines 74-78).

9. Regarding claims 65 and 69, Sharp discloses a container (Figures 6-8) with a basket, a lid attached by a hinge, a latch securing the lid (10, 21, page 2, lines 40-43) and horizontally elongate vertically oriented ventilation slots between the lid and the basket body to enable bi-directional air flow (12', 12", 16, page 2, lines 66-78). Sharp does not teach that the basket is smooth walled. Borst et al discloses a container with smooth sidewalls and no structural ribbing (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of smooth sidewalls and no structural ribbing as disclosed by Borst et al in the container disclosed by Sharp to provide smooth surfaces for contact with the contents and minimize damage caused by sharp corners.

10. Regarding claim 78, container of claim 65 is disclosed above and Sharp further discloses the latch is a button latch (10, 21, page 2, lines 40-43)

11. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp and Borst et al in view of Quong (4,618,069) and Morgan (3,651,977).

12. The container of claim 39 is disclosed as discussed above but Sharp and Borst et al do not teach the use of a tray for shipping a plurality of containers. Quong discloses shipping of produce containers in trays for easy handling of a plurality of

containers (column 2, lines 36-40). Morgan discloses a tray intended to hold a plurality of produce containers with netlike perforate walls providing air flow to vent holes in the containers and allowing airflow between the containers (Figure 1, column 1, lines 9-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of trays with netlike perforate walls to provide air flow to vent holes in the containers and allow airflow between the containers as disclosed by Quong and Morgan with the container disclosed in claim 39 to allow for efficient handling of a plurality of containers while providing adequate air flow to and between the containers.

13. Claims 67, 70 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp and Borst et al in view of Hayes (6,644,494).

14. Regarding claim 67, the container of claim 65 is disclosed as discussed in paragraph 21 above but Sharp and Borst et al do not teach at least one ventilation slot in each of the front back and two side walls of the container. Hayes discloses a container with ventilation slots in the front, back and two side walls between the lid, or a portion of the lid, and the basket body (200, 210, 220, 230, Figures 1-4, column 3, lines 19-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of ventilation slots in the front, back and two side walls as disclosed by Hayes in the container disclosed in claim 66 to provide for cooling ventilation completely through the container in two directions.

15. Regarding claim 70, the container of claim 67 is disclosed above and Sharp further discloses a hinge at the back of the basket (5, Figure 3).

16. Regarding claim 74, container of claim 70 is disclosed above and Sharp further discloses a channel to allow airflow under the container (Figure 3).

17. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp and Borst in view of Krupa et al (5,456,379). The container of claim 74 is disclosed except for the arched ventilation channel. Krupa et al disclosed an arched ventilation channel under the container (Figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of arched ventilation slots under the container as disclosed by Krupa et al in the container disclosed in claim 74 to provide for better cooling ventilation flow under the container.

18. Claims 39, 47, 48, 54, 56, 57, 68, 84 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guillin (5,833,116), in view of Borst et al.

19. Regarding claims 39, 54, 57, 68, 84 and 85, Guillin discloses a container (Figures 1 and 2) with a basket body (1) with side walls, a lid (2) with a latch (Figures 3-6) and horizontal ventilation slots (3) on four sides of the container between the basket and the lid to allow ventilation in two directions perpendicular to each other and parallel to the major and minor axes of the container. Guillin does not teach that the basket is smooth sided. Borst et al discloses a container with smooth sidewalls and no structural ribbing (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of smooth sidewalls and no structural ribbing as disclosed by Borst et al in the container disclosed by Guillin to provide smooth surfaces for contact with the contents and minimize damage caused by sharp corners.

20. Regarding claims 47 and 48, Guillin discloses an edge catch latch for reversibly securing the lid to the basket (Figures 3-6).

21. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guillin and Borst et al in view of Quong (4,618,069) and Morgan (3,651,977).

22. The container of claim 39 is disclosed as discussed above but Guillin and Borst et al do not teach the use of a tray for shipping a plurality of containers. Quong discloses shipping of produce containers in trays for easy handling of a plurality of containers (column 2, lines 36-40). Morgan discloses a tray intended to hold a plurality of produce containers with netlike perforate walls providing air flow to vent holes in the containers and allowing airflow between the containers (Figure 1, column 1, lines 9-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of trays with netlike perforate walls to provide air flow to vent holes in the containers and allow airflow between the containers as disclosed by Quong and Morgan with the container disclosed in claim 39 to allow for efficient handling of a plurality of containers while providing adequate air flow to and between the containers.

23. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guillin and Borst et al in view of Sharp. The container of claim 56 is disclosed except for the plurality of ventilation slots between the body and the lid in the front portion of the container. Sharp discloses a plurality of ventilation slots on one side between the body and the lid (12', Figures 3 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a plurality of

Art Unit: 3727

ventilation slots between the lid and the body in one side as disclosed by Sharp in the container of claim 54 to provide better support for the front of the container by reducing the span of the individual slots.

Allowable Subject Matter

24. Claims 38, 50, 83 and 86-88 are allowed.

25. Claims 40, 55 and 73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

26. Applicant's arguments with respect to Lovatt and Dehart have been considered but are moot in view of the new ground(s) of rejection.

27. Applicant argues that Sharp does not teach a smooth walled container. In response, this has been addressed in the above action.

28. Applicant argues that the openings of Sharp do not provide for bi-directional air flow because there is no opening in the back wall. In response, Sharp does provide for bi-directional air flow in that air can move in from one side and out from the opposite side, air can move in from the front and out either side or the lid and air can come in from the bottom and out of the lid (Page 2, lines 58-78).

29. Applicant argues that the ventilation slots formed between the body and lid of Sharp do not enable bi-directional air flow. In response, Sharp does provide for bi-directional air flow in that air can move in from one side slot and out from the opposite

side slot, air can move in from the front and out either side slot or the lid or bottom ventilation holes.

30. Applicant argues that the limitations of claim 67 are not met by Sharp, Borst and Hayes as to the presence of a ventilation slot between the lid and the body in the hinge side of the container. In response, Hayes discloses a slot (210, Figure 2) just above the hinge and this ventilation slot is between the body and the top portion of the lid above the slot..

Conclusion

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

Art Unit: 3727

4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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